

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
Docket No. 2013-252-C**

In re:	)	
	)	
<b>Joint Application of Birch Communications,</b>	)	<b>BIRCH’S MOTION FOR</b>
<b>Inc.; Birch Telecom of the South, Inc., dba</b>	)	<b>EXPEDITED REVIEW</b>
<b>Birch Communications; and Lightyear</b>	)	
<b>Network Solutions, LLC for Approval</b>	)	
<b>to Transfer Assets</b>	)	

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Birch Communications, Inc. (“BCI”); Birch Telecom of the South, Inc., doing business as Birch Communications (“Birch”) (collectively the “Company”) hereby move pursuant to 10 S.C. Code Regs. 103-829 and other applicable rules of practice and procedure of the Public Service Commission of South Carolina (“Commission”) that the Commission perform an expedited review of the Joint Application of the Company and Lightyear Network Solutions, LLC (“Lightyear”) (Birch Communications, Birch Telecom and Lightyear collectively, the “Joint Applicants”) to approve the transfer of certain of Lightyear’s telecommunications assets and South Carolina customer base to the Company. The Company requests that the Commission admit the Joint Application and the prefiled testimony into the record and use its discretionary authority to informally dispose of the proceeding without holding a formal hearing. In support of this motion, the Company would show the following:

1. As described in detail in the Joint Application, the Joint Applicants seek the Commission’s approval to transfer certain assets from Lightyear to the Company. Lightyear’s South Carolina customers will continue to receive the same high quality service, at the same rates and under the same terms and conditions.

2. The Company published notice of the filing of the Joint Application in area newspapers as required by the Commission. The deadline for filing petitions to intervene in the proceeding was August 2, 2013. No comments or petitions to intervene have been filed. The South Carolina Office of Regulatory Staff (“ORS”) is a party pursuant to statute. ORS does not oppose the Joint Application and does not object to this motion.

3. The Company filed the verified direct testimony of Christopher J. Bunce in support of the Joint Application. Mr. Bunce is the Senior Vice President and General Counsel for BCI and Birch. Both BCI and Birch are certificated to provide telecommunications services in South Carolina. Mr. Bunce’s testimony describes the asset transfer and its negligible effect on Lightyear’s South Carolina customers.

4. The Joint Applicants anticipate that the transaction will be completed on or about September 15, 2013. Upon completion of the transaction and the migration of customers to Birch, Lightyear will no longer offer telecommunications services in South Carolina. The Joint Applicants request that Lightyear’s certificate of public convenience and necessity and any associated tariffs be cancelled effective December 31, 2013, to give adequate time for the migration of customers and for Lightyear to satisfy any remaining regulatory obligations for its South Carolina operations. Birch will notify the Commission within thirty days of completion of the asset transfer and customer migration.

5. The Company is informed and believes that there are no issues in dispute between the Parties, and that the Joint Application and testimony of Mr. Bunce filed with the Commission offer a complete record sufficient to form the basis for an ultimate determination in this matter.

## ARGUMENT

6. The Joint Applicants filed their application pursuant to S.C. Code Ann. § 58-9-310. Section 58-9-310 provides that “no telephone utility, without the approval of the Commission after due hearing and compliance with all other existing requirements of the laws of the State in relation thereto, may sell, transfer, lease, consolidate or merge its property, powers, franchises, or privileges or any of them....” S.C. Code Ann. § 58-9-310 (Supp. 2012). Notice has been published as required by the Commission and any interested party, including the Joint Applicants, have thus had an *opportunity* for a hearing.

7. The Company seeks expedited review of the Joint Application on the grounds that (1) the S.C. Administrative Procedures Act (“APA”) grants the Commission flexibility regarding hearings in contested matters, (2) due process requirements are satisfied if the Applicants waive the right to a hearing when there is no disputed material issue of fact and (3) notice and the opportunity to present written evidence is sufficient to provide the procedural due process protection.

8. Administrative agencies in South Carolina "are required to meet minimum standards of due process. Due process is flexible and calls for such protections as the particular situation demands." *Stono River Environmental Protection Association v. S.C. Dept. of Health and Environmental Control*, 406 S.E.2d 340, 342 (S.C. Sup. Ct. 1992); *Anonymous v. State Board of Medical Examiners*, 473 S.E.2d 870 (S.C. Ct. App. 1996) citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

9. The Administrative Procedures Act (“APA”) provides that "in a contested case, all parties must be afforded an opportunity for hearing after notice not less than thirty days." S.C. Code Ann. Section 1-23-320(a) (Supp. 2012). The provisions of the APA ensure that procedural

due process requirements are satisfied. The APA also provides some flexibility to agencies regarding hearings for contested cases. "Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default." S.C. Code Ann. § 1-23-320(f) (Supp. 2012). Notice of the Joint Application was published as required by the Commission. Therefore, notice and an opportunity for a hearing have been provided. ORS does not object to the motion. The Company respectfully requests that the Commission dispose of the proceeding without requiring a formal hearing.

10. Holding a formal hearing "is appropriate where adjudicative facts involving the particular parties are at issue. Conversely, an agency may ordinarily dispense with hearing where there is no genuine dispute as to a material issue of fact." 2 Am. Jur.2d *Administrative Law* § 298. In addition, "the right to a hearing...may be waived." 2 Am. Jur.2d *Administrative Law* § 296. The Company is requesting that the hearing requirement be waived and there are no intervenors opposing the Joint Application. Therefore, there is no material issue of fact to be decided at a formal hearing.

11. The Joint Applicants have presented information on the proposed transaction in the Joint Application and the verified direct testimony of Mr. Bunce. Since the ORS does not object to the motion, the Company asserts that a full evidentiary hearing on the Joint Application is unnecessary.

WHEREFORE, BCI and Birch respectfully requests that the Commission admit the Joint Application and verified testimony into the record, informally dispose of the proceeding without holding a formal hearing, approve the transfer of assets on an expedited basis, and cancel Lightyear's certificate of public convenience and necessity and any associated tariffs effective December 31, 2013.

Dated this 15<sup>th</sup> day of August, 2013.

**Robinson, McFadden & Moore, P.C.**

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